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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1945

NO. 470

UNITED STATES EX REL. WILLIAM A. DOSS,
*Petitioner,*

*vs.*

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI

WILLIAM A. DOSS,
*Petitioner, Pro Se,*
Martin Building,
Monticello, Illinois.

WEILER PRINTING CO., DECATUR, ILL. 11

# INDEX

## *Table of Contents*


Preliminary Motion ..... 1-21
(a) To File Certified Copy of Transcript of Record, Etc.,
(b) To File Dimuted Record, Etc.,
(c) For the Allowance of Bail Bond.

Petition for Writ of Certiorari..... 22
I. Short Statement and Summary of Matters Involved .....22-25
II. Statement of Jurisdictional Grounds.....25-33
III. Questions Presented: Specifications of Errors 33-34
Additional Errors .....35-37
Brief and Argument in Support of Petition for Writ of Certiorari; Reasons Relied on For Allowance of Writ .....38-52
Appendix .....53-55


## *Cases Cited*


American Manufacturing Company v. City of St. Louis, 250 U. S. 459 ..... 49
Atkinson v. Detroit Free Press, 46 Mich. 341..... 32
Bridges v. State of California, 314 U. S. 252....30, 45, 46
Bridges v. Wixon, 65 S. Ct. No. 17, pages 1445-1464.33, 34
Budd Mfg. Co. v. National Labor Relations Board 142 Fed. (2) 922 ..... 30
Doss, in re, 367 Ill. 570 .....12, 45
Doss v. Lindsley, 53 Fed. Supp. 427..... 27
Doss v. People, 321 U. S. 789..... 26
Hawk, Ex Parte, 321 U. S. 114.....46, 48
Howard v. Fleming, 191 U. S. 126 ..... 49
Johnson v. Zerbst, 304 U. S. 458..... 43
Mooney v. Holohan, 294 U. S. 103 ..... 46
Moss, in Re, 23 Appeal Cases D. C., 1474..... 10
People v. Doss, 318 Ill. App. 387 ..... 26
People v. Doss, 384 Ill. 400 .....26, 27

People v. Zimmerman, 278 U. S. 63 .....38, 39
Schenck v. United States, 249 U. S. 47..... 34
Screws, et al. v. United States, S. Ct. 65, No. 14, pages 1031-1063 ..... 33
Stuart v. People, 4 Ill. 399..... 33
Thomas v. Collins, 65 S. Ct. 315..... 33
West Virginia State Board of Education v. Barnette, 319 U. S. 624 .....41, 45
Whitney v. California, 274 U. S. 357 ..... 30
White v. Ragen, 65 S. Ct. 978 ..... 32
Williams, Ex Parte, 217 U. S. 604..... 48

*Statutes*

Judicial Code of the United States, Sec. 240 (a)...28, 52
Smith-Hurd Annotated Statutes, Illinois C. 38, Sec. 402 .....28, 30, 39
Illinois Statutes, State Bar Association 1943 Edition, Sec. 204, Chapter 110 ..... 28
Rules of Practice of the United States Supreme Court, Sec. 8, Rule 38 ..... 16

*Miscellaneous*

Constitution of the United States, First Amendment .....27, 29, 30
Constitution of the United States, Fourteenth Amendment .....27, 29, 30
Constitution of the State of Illinois, Article II, Sec. 4 .....29, 30
Count I, Indictment of W. A. Doss .....40, 54
Count II, Indictment of W. A. Doss..... 55

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UNITED STATES EX REL. WILLIAM A. DOSS,
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*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI

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*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

PRELIMINARY MOTION: Motion (a) To File in the Above Entitled Cause a Transcript of the Record Duly Certified Thereunto by the Clerk of the Circuit Court of Piatt County, Illinois, in the Matter of the Petition for Habeas Corpus of Motioner Filed in said Lower Court on August 20, 1945, Etc., For the Present Instance, at least, Together with Forty Printed Copies of This Motioner's Original Petition for Certiorari Unto this Court in these Premises, Which Original Petition is Hereto Attached and by Refer-

ence is Thusly Made a Part of This Motion, Etc.;

(b) And to Allow and Provide For an Order to the Clerk of This Court to Dispense With His Compliance With the Rules of This Court in Printing Forty Copies of Said Certified Record, —And That he Shall, in lieu Thereof, be Ordered to Cause to be Printed and Filed Herein Forty Copies of the Said Certified Record Shortened or Dimuted as in Writing Requested by Motioner to be Stipulated to by and for, Between Himself and Said E. E. Lindsley, Sheriff of Piatt County, Illinois, Which the Latter Refused to do, all as Particularly Appears From a Copy of Said Written Request, Which Was Caused by Motioner to be Served on Him and His Attorney, Carl I. Glasgow, State's Attorney of said County of Piatt, Hereto Attached, Marked "Exhibit A." and by Reference Made a Part of This Motion, Etc.

(c) And that Petitioner be Ordered the Allowance of the Giving of Bail Bond Pendente Lite, Etc.

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Now comes William A. Doss, motioner, and petitioner in the above entitled cause, pro se, and moves that this Honorable Court hear immediately, as preliminary motions, those three separate matters described in the entitlement hereof as "(a)", "(b)" and "(c)" divisions, and for grounds in support thereof says:

(1) As to division (a), that the petition has in the original habeas corpus case, as reference thereto will disclose, 201 pages, while, in addition thereto, are 109 pages of exhibits and appendices. That the occasions causing petitioner to believe that this admittedly unusually long petition was warranted, and which, on the other hand,

caused him to believe and hold it to be necessary, were, among other instances, the following: (1) For some three years last past petitioner has filed and prosecuted to unsuccessful conclusions, with the aid of three separate, good and reputable law firms, namely, Fitzgerald & Day of Springfield, Illinois, Richard Westbrooks of Chicago, Illinois, and Svenjborn Johnson of Champaign and Chicago, Illinois, and expended therein several thousands of dollars, and in none of these hearings were there ever presented what petitioner believed then and yet believes to be a sufficient background showing not only the historical developments of the American principle commonly known as the "unabridged free press", nor as fully as should have been its embattlements through the various American courts in the various epochs of its history from a purely legal standpoint; (2) that because of that brevity petitioner believes that none of his said cases were the courts in such instances treated with that fairness that they were respecitvely entitled to. However, considering that more than likely, by the usual and ordinary rules of practice in all of the said several courts, these attorneys were right and free from all professional blame in deleting from petitioner's prepared petitions, in most instances, one-half to two-thirds of these sort of charactered matters, which, in the petition now at hand, have not been deleted, but, in several instances enlarged upon, and because of the fact that since said attorneys had appeared in those other petitions, this honorable Court has rendered decisions in some half a dozen cases or more wherein these subject matters have been materially and most pointedly and most unequivocably covered, while, on the other hand, too he has noted, to his great displeasure, some considerable numbers of dissenting opinions, which petitioner humbly states he disagrees with in their legal reasonings and con-

clusons. (3) And realizing, as he believed, that it was not even common sense to present such gigantic, fundamental and far-reaching constitutional questions as he believes are presented by said petition, to any ordinary downstate judge, petitioner knowing nearly all of them, they never having had any experience or any occasion to be even a student about, much less a judge, upon such issues—petitioner deeming a process of pure legal education, if he may he pardoned for stating such facts, was a task and burden inescapably resting upon the petitioner to undertake if any favorable decision to his case was to be sensibly hoped for, short of a decision in this honorable Court, whose Judges petitioner readily concedes know and understand these principles far better than this petitioner. (4) But petitioner had hoped against hope to save himself these considerably more to be added expenses, and to, if possible, end these litigations in the State Courts of Illinois, but so far it has proven to be an unwarranted hope. (5) That while petitioner cannot qualify as being a pauper, yet neither is he what he would term a rich man, *when his debts are all paid*. The truth of the matter is that petitioner's financial matters are now, and chiefly so caused as a result of these prosecutions starting with the indictment upon which this very imprisonment is now based, back on January 15, 1942 when it was returned into the Circuit Court of Piatt County, Illinois, so that *now* petitioner can not-go to his own and only bank, The National Bank of Monticello, Illinois, and borrow upon his own unsecured note $200.00, because he has been refused this time and time again in the past two years, notwithstanding said Bank has a showing all of the while of deposits of much more than a million dollars. That it is and will be a great hardship upon this petitioner to be forced to have printed, at his cost, the 310 paged over-all petition

alone that appears in the certified transcript of the record, which, as a gross total contains 328 pages; but, on the other hand, he can and will gladly pay the costs of the printing of the diminished petition and the full parts of the remainder of the record, as required by the rules of this honorable Court. (6) That he charges the respondent and his attorney are totally unfair and are not at all warranted in refusing to join in said stipulation to diminish the printing of this record; (7) That they are not lawfully warranted in contesting and objecting to petitioner being allowed to give bail bond pendente lite, as they do; (8) That the said Glasgow, though even the sole and only prosecuting witness endorsed on the indictment, and even though on that account said Court appointed one O. D. Mann of Danville, Illinois, as special prosecutor, and he so signed said indictment, and is still living and yet practicing law, still said Glasgow is wrongfully and unlawfully allowed by the said Court, over the repeated objections of this motioner, to appear in all these habeas corpus proceedings, as he did in the case at bar,—as the sole and only attorney for said respondent—claiming his right to so appear as "State's Attorney of said County"; motioner has disputed and objected to his appearances all along—and does now—and, indeed, assigns that very situation to be the sole cause and reason why respondent is not allowed or advised to join with the motioner in the said stipulation for a diminution of the said record—all of which he charges to be an unjust and unfair position for this motioner to be forced into; that the said Glasgow is not only now full of animosity and vindictiveness against motioner, but was even so back on January 15th, 1942, when his said indictment was returned into court; when motioner was called before the Court on that day to plead and give bail bond, he sat within fifteen feet of where petitioner was

sitting "in open court" and absolutely, deliberately and maliciously "thumbed his nose" at this motioner. It is not material here further to show, as the truth was, however, that although motioner at once arose, called the attention of his said actions to the then presiding Judge, W. S. Bodmen (he has since resigned) and asked for a citation against him (Glasgow) for contempt of court, etc., but, suffice it to say that the Judge would not allow motioner to be personally sworn, then and there, to prove the charge, and even declared, in response to motioner's offer to file a written sworn charge, to the effect that, "If you do it will do no good, I will strike the complaint from the files on my own motion"; such are fair showings as to the kind and character of treatments that motioner has been forced to suffer and endure to the present in these matters.

In conclusion, motioner merely desires to add that on August 24th, 1945, when this petition—310 pages—was before the Honorable Martin E. Morthland for hearing—at the outset of the trial Judge Morthland answered motioner to the effect that he had not read any part of said petition and neither would he allow time for either side to read it to him, but would only allow each side time to tell him by way of argument what each side contended, so, thusly limited, all together not over three and one-half hours were used, and, at the conclusion, in less than thirty seconds, and without assigning one word for the grounds of his decision, instantly declared, "petition stricken from the files." This is another example of the total want of considerations that have been given to these matters by every Court of the State of Illinois, not excluding those of the Supreme Court of Illinois—all of which matters in the main do affirmatively appear in the two hundred pages of the main body of said petition.

Petitioner knows of no better, or more brief or effective corroborative way to help establish his position, and to warrant as a guaranty of his complete sincerity and convictions in and about all of these premises, as are related, not alone in this "Preliminary Motion," but in and throughout his petition for certiorari following herein, than to copy a mere paragraph or so from the latest issue of his Liberty Press, which was issued under date of September 1, 1945, it being issue No. 77, and from which he quotes such parts as follows:

> "You will observe State's Attorney Glasgow has not stopped the Liberty Press—and he never can—boast as he will!
>
> "Yes, I understand Japan, too, has surrendered; that we now have a world renowned atomic bomb; and progress is being made toward a world organization for peace, notwithstanding the Republican Party's resistance to it by its unwarranted policies of isolationism. This is all in perfect harmony and rapport with the speech I made at our Republican precinct committeeman meeting in Bement, in October, 1941, (just a few weeks before our Pearl Harbor "reminder"), when I *urged* then the endorsement of Roosevelt's certain policies, viz:—(a) To fortify Iceland against Hitler; (b) arm our merchant ships against Hitler; (c) build our navy, army and air forces up rapidly to challenge Hitler's too evident threatening purposes to enslave the earth; (d) get out of our silly, brainless, Republican position of isolationism; I reminded them I had made a trip to Mexico City that year in January, and also the second trip in June; that I had more than casually noted at our Rio Grande river border and for 750 miles south to Mexico City, how,

like a 'fat goose' we were lying open to attack by Hilter, via the military route through Africa, across to South America, then via Mexico City, right up and into the heart of our United States *he could come*—and I expressed my 'fears' of just that—it is now *history* that that was Hitler's plan; and but for England, France and finally Russia, *history would now be a sad one for our America*! But, so much for that. I paid for that speech with four indictments and a contempt of court Information at once thereafter, as soon as Attorney H. I. Green could push the Court machinery! I am now still paying for that speech!

"Oh, yes,—at once after that speech (and remember our Congressman Wheat spoke at that meeting—he (representing Attorney Green's views) strenuously denounced those Roosevelt policies; yes, Burl A. Edie followed him up too, along with Representative Clabaugh, etc., and our other Republican leaders—and I spoke last. I received all of their spears in my neck; But where are their positions today? Shame on you fellows —you murdered Wilkie, and lost your best and maybe the last chance to put the great Republican Party into power for a long time yet to come, and under the right principled leadership! You have paid for all of that *nationally* and internationally, by the lives and injured bodies of your sons, etc.; you may receive another hard shock too, especially in our next Governor election; just murdering Willkie and putting Judge Doss in jail —still leaves loose three Franks to weigh — Frank Lilly, Frank Dresback and Frank Hoffman, and some other 'free *thinkers*' to be *handled*, or *buried*, or *jailed!*

"Yes, at once after that Bement meeting—Attorney H. I. Green *ordered* his attorney employee, Oris Barth, over here with commands to *stop*

*Judge Doss!* They can't successfully deny that because I have a lawyer as a witnes to whom Barth told all of that!

"Now that he has me in 'jail' I suppose he *feels* that to be an accomplishment! *Well, I don't think he has gained a thing—this will in the end only prove out against him and his evil works just as Hitler's did to him—wait and see!*"

Another matter which he believes will be immeasurably helpful too in a way, if any one thing can be more than another, are the facts as are set forth in this petition for habeas corpus shown in the record on page 26, paragraph 29; the substance thereof being that the said Carl I. Glasgow, while he was an attorney employee in petitioner's law office (shortly before he was elected State's Attorney) stated to two of this petitioner's stenographers, namely, Elsie Rankin Weaver and Lula Perry, each being reputable persons and now living, to the effect that to him the Bible was more or less a fiction—that its teachings were mere myths—nothing to it—that he knew because he had once taken a course in all of that in the University. The petition further states that petitioner never learned of that situation about Carl I. Glasgow's attitude toward the Bible until during the time he was preparing this petition for habeas corpus at bar.

For brevity reasons only he makes no comments on either (a) that quotation from the Liberty Press, or (b) on said Glasgow's attitude toward the christian teachings of our Bible, other than to say that in his judgment such a charactered official, especially in a State's Attorney's office, is an ideal one to be used by the hands of evil, malicious and unscrupulously minded politicians, and he has charged in said petition that there were such who were

using the said Glasgow to, and he did, wrongfully, unwarrantedly and unlawfully persecute, not prosecute, this petitioner; that petitioner has never been sued for civil damages by any one for any publications in his Liberty Press; that Issue No. 76 was published November 24th, 1944, and there were some six thousand copies printed,—for the printing alone for which he paid the Linxweiler Printing Company of Decatur, Illinois, $996.00; that each issue the said Carl I. Glasgow received, and without doubt he believes and charges that said Attorney H. I. Green did also receive a copy of each issue.

Petitioner feels that it would be near the height of legal triteness to cite in these premises any legal authorities at all to this Court, but does desire to call Your Honors' attention especially to one case, and that is one entitled, "*In re Moss*, 23 Appeal Cases, D. C., 474" and from page 475 thereof he quotes:

> "If bail be not allowed during the pendency of the appeal the mere right of appeal, if rights exist for the cause alleged, would be without beneficial effect and valueless to the party. It would seem, therefore, eminently right and proper that the party should be admitted to bail during the penddency of the appeal * * * An order will be signed accordingly."

There is too one more situation that petitioner feels embarrassingly bound in a way to relate unto this honorable Court, and it is just this: The Supreme Court of Illinois convened its September Term of court the 10th. inst., and to this date, the 18th. inst., petitioner has received no information as to any action of any kind that it has taken upon his petition for a writ of habeas corpus, filed therein on June 4th, 1945; and that situation of delay, in the matter alone of not, with reasonable dispatch,

either allowing or refusing to allow bail bond unto petitioner pendente lite, is within itself a legal factual situation that petitioner most earnestly and bitterly complains about, and is further evidence, he charges, that even the Supreme Court of Illinois unwarrantedly and unlawfully refuses and neglects to heed the clearly expressed provisions of the Federal Constitution and its Bill of Rights in these habeas corpus matters and proceedings. And petitioner is hereby petitioning for relief against the same, and is continuing to repeatedly charge that he has been and is now continuously being denied and deprived of due process of law in all of said premises by all of the courts of the State of Illinois, and that he has certainly now established that he has "exhausted all possible State remedies in all of the courts of his, the State of Illinois."

That petitioner is now and has been confined in this the County Jail of Piatt County, since June 16th. last; that he was sixty years of age on August 1st, last; that his sentence is for six months, upon a mere alleged criminal libel in publishing in his Liberty Press paper, in its Issue No. 12 of April 24th, 1942, to the effect that I did not believe that "Carl I. Glasgow was a fair and impartial prosecutor"; that from 1908 to 1912 motioner was State's Attorney of said Piatt County, and from 1914 to 1922 was County Judge of said County; that he was disbarred by the Supreme Court of Illinois in 1937, and from that decision itself is disclosed that its primary alleged grounds were because motioner was causing newspaper publications to be made "questioning" the correctness of various local Court decisions—and the "propriety" of the professional law practice of several local attorneys—one being Lott R. Herrick, now deceased, happened to later be elected as a Judge of the Supreme Court of Illinois whereof he was a member in 1937, when motioner suffered his disbarment,

but the record reads, "Herrick took no part in the decision," and motioner has, in his Liberty Press frequently published the question, "Why didn't he?" That disbarment decision appears in Ill. Sup. Ct. Vol. 367, P. 570.

Finally, maybe it is, or is not, apropos to move, but petitioner will attempt to find relief also in this wise, in an effort to have this honorable Court provide for bail bond pending hearing on this petition, as follows:

(a) When it has become known, as now, and beyond argument established by law, that there are no courts of "highest resort" in the State of Illinois that will let, or enact, by their functions and powers, by law, to safeguard, protect and enforce these federal rights, immunities and privileges described in this petition, in this petitioner's behalf, then where, when, how and in what forum is he to begin to find "relief and retribution"? He indeed has traveled voidlessly for now over three and a half years, hunting for such; he has spent many thousands of dollars to some four different sets of law firms in Illinois, court costs and labor beyond calculation; all as yet to not the slightest avail. He would indeed, as an ex-County Judge for eight years and as an ex-State's Attorney for four years, of this very County, be an invaluable speaker to travel at these hours over Japan and Germany to, in good faith, attempt to advocate to those respective peoples the adoption of a government based upon a democracy such as he has found ours in America to be these last three and a half years. There undoubtedly is a remedy, a way, but how and where is it? Can Governor Green's indictment of our Illinois courts stand good another five years as it has since in 1940, when, to a college of law graduating class in Chicago, he uttered these words, "In Illinois it is not any longer a question of what law you have on your side, but

what lawyer"? And that statement does appear in this petition at bar.

Is petitioner to be yet forced to start other "inspecting legal tours" and file his petition in his Federal District Court for the Eastern District of Illinois, praying his government "for relief" from these oppressions by State of Illinois officials in their denying and depriving him of his said Federal Constitutional rights? If so, where would the end of such prosecutions be? Is it not within the legal power of this honorable Court to provide, or suggest, or direct the way to those remedies? If not, is it not, I repeat, within its legal power to suggest or point out the legal proceedure by which petitioner may yet gain relief before he is suffered to serve his whole present six months of jail imprisonment, then (when if law victory comes) only to at the end be then informed, in effect, that all imprisonment was illegal? Such an ending would leave this petitioner, as a citizen, wishing he had died in ignorance of there ever having been such a remedy. He respectfully and humbly, but not faintingly, presents all of these things in the belief of his rights to so do, as an ordinary American citizen. He especially renews his request for the fixing of a bail bond pending this hearing.

(b) It may not be out of order either, and it may be petitioner's proper bounden duty, to be all in ever full and complete only intended full fairness, as he does, to this honorable Court, to enlarge this record further merely to show that on the 7th. day of September, 1945, he caused full copies of this petition and various other records of the proceedings involved in these prosecutions to be forwarded to the office of the United States Attorney for the Eastern District of Illinois, one William W. Hart, at East St. Louis, Illinois, with his petition requestng investiga-

tions of these alleged criminally unlawful actions of said Carl I. Glasgow, O. D. Mann, N. E. Hutson, E. J. Hawbaker, Robert P. Shonkwiler and Burl A. Edie, for prosecutions, if he deems the premises to be thusly so actionable—petitioner specifically calling his attention to the pronouncements of our federal laws as are set forth by this honorable Court in the said case of *Screws, et al v. United States*. But even if such actions might successfully follow, they do not at all even begin to meet the answer to the giving of the present relief that petitioner insists he is presently entitled to by law, in being at least allowed the privilege and right of giving bail bond pending these hearings upon the main petition for certiorari at bar; and he declares that he now stands ready, able and desirous of giving the approved bail bond in any reasonable and lawful amount that this most honorable Court should by its order fix and allow.

Petitioner would further state that in addition to the matters asked to be deleted from the printed record in his proceeding, as per "Exhibit A." to this Preliminary Motion, he would further ask that the following also be deleted from said printed record, to-wit:

(1) Exhibit C. to said petition for writ of habeas corpus, being a copy of "Suggestions of Grounds," etc., used in the Supreme Court of Illinois;

(2) Exhibit D. to said petition, being a copy of the order of the Supreme Court of Illinois;

(3) Exhibit E., to said petition, being re W. A. Doss' petition in the Supreme Court of Illinois.

However petitioner now does wish to include in said printed record especially paragraph 29, page 26.

Motioner does express regrets that even this motion has seemed to be unavoidably necessarily enlarged from

step to step to give unto this Court, only as the truth is, just a small part of the many reasons why he verily believes that he should be permitted to have this motion allowed as moved for in said divisions, A, B, and C aforesaid.

All of which is respectfully submitted.

WILLIAM A. DOSS,
*Motioner-Petitioner*
*Pro Se.*

STATE OF ILLINOIS }
COUNTY OF PIATT } ss.

William A. Doss, being first duly sworn upon his oath, deposes and says that he is the Motioner-Petitioner, Pro Se, in the above entitled cause; that he has read the foregoing motion, by him subscribed to, known the contents thereof, and says that the matters and things therein contained are true and correct.

And further affiant sayeth not.

WILLIAM A. DOSS,

Subscribed and sworn to by William A. Doss, petitioner pro se, in the above entitled cause, before me, Lula Perry, a Notary Public in and for said County and State, this 18th day of September, A. D. 1945.

LULA PERRY,
*Notary Public*
My Commission Expires, April 14, 1946.

EXHIBIT "A"

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1945

NO.....

UNITED STATES EX REL. WILLIAM A. DOSS,
*Petitioner,*

*vs.*

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI

TO: E. E. Lindsley, Sheriff, Piatt County, Illinois; and Carl I. Glasgow, His Attorney of Record in the Proceedings and Trial Held in the Circuit Court of Piatt County, Illinois, on August 24th, 1945, Before the Honorable Martin E. Morthland, Judge of Said Court:—

You will each take notice hereby that the undersigned, William A. Doss, petitioner in the above entitled proceedings, under and in accordance with Section 8, of Rule 38, of the Rules of Practice of and in the United States Supreme Court, being desirous of making a diminution of the record and omission of all unnecessary, immaterial and irrelevant parts from the printed record which are not essential to a consideration of the questions presented by

the petition for the writ, hereby below submit to you the specific described parts that petitioner desires to have omitted from the printed record, and tenders hereby his offer, willingness and request to have such a formal stipulation executed on his part, and upon your parts, or that of the respondent, at least, and without delay, that the procedure in the premises be not unnecessarily delayed.

The parts to be omitted from such printing of the record are:

—I—

From the certified petition on file in this record omitting the following paragraphs:

| *Paragraph Number* | *Page Number* |
|---|---|
| 6 (Including expressly the omitting of Exhibit "R" except as stated on page 4 hereof) | 2 |
| 16 | 15 |
| 18 | 17 |
| 19 | 17-18 |
| 21 | 19-20 |
| 22, 23 | 20 |
| 25, 26 | 21, 22 |
| 29 | 25 |
| 31, 32 | 27, 28, 29 |
| 35, 36 | 30, 31 |
| 37, 38 | 31, 32 |
| 39 | 32 |
| 48 | 37 |

—II—

| | |
|---|---|
| 1 | 39, 40 |
| 2 | 41 |
| 4 | 42 |
| 6 | 43 |
| 6 | 44 |
| 8 | 45 |
| 10 | 47 |
| 11 | 47 |
| 12, a, b, c, d, e, f | 47, 48, 49 |
| 13, 14, 15 | 50, 51 |
| 21 | 52 |
| 26, 27, 28, 29 | 54, 55 |
| | All of Pages 57, 58, 59, 60; |
| 40, 41, 42, 43 | 62 |
| | 1st. top three lines on page 63; |
| 48 | 65 |

—III—

| | |
|---|---|
| 1 | 65, 66 to (a) on page 67; |
| 2 | 69, 70 |
| 3, 4 | 70 |
| 5, a, b, 6 | 71, 72, 73 |
| 9 | 74 |

—IV—

| | |
|---|---|
| 1,a,b,c,d,e, 2,3 | 75, 76, 77; |
| | All pages 78, 79, 80, 81, 82, 83, 84; |

—VI—

| | |
|---|---|
| 3 4 | 86 |
| 6, 7 | 87 |
| | All pages 88, 89, 90, 91, 92. |
| 15, 16 | 93 |
| | All of pages 94, 95, 96, 97, 98, 99, |
| 37 | 106, 107 to paragraph 39; omitting the last five words on page 107; |

All of pages 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118.

—VII—

All pages 119 and 120, to paragraph 4;
10 122, and to paragraph 11 on page 123;
All on page 124, except top line;
All pages 125, 126, 127, 128, 129, 130;
131 to paragraph 26;
All of pages 132, beginning only with paragraph 27;
All of 133.

—VIII—

All pages 134, 135, 136, 137, 138, 139, 140, 141 142, 143, 144, 145, 146, 147, 148, 149, 150, 151;
All of page 152 to beginning of paragraph (15);

—VIII—

Omit the rest of page 157 from VIII on down;
158
4 159
6 160
8, 9 161
All pages 162, 163, 164, 165, 166 to paragraph 2;
167 beginning at paragraph 4;
168 to paragraph 5;
169, beginning at paragraph 6;
All pages 170, 171, 172, 173, 174, 175, 176,, 177, 178;

| | |
|---|---|
| | All of 179 to paragraph 4; |
| 5, 6, 7 | 180 |
| 8 | 181 |
| | —VIII— |
| | The rest of page 182, beginning at paragraph 3; |
| | All pages 182, 183, 184; |
| | 185 to paragraph 6; |
| | 186 beginning from paragraph 8; |
| | 187 |
| | 188 to paragraph 13; |
| | 189 beginning at Paragraph 14; |
| | All of 190, except paragraphs 16 and 17; |
| 18, 19 | 191 |
| | All 192, 193; |
| | 194 to paragraph 22; |
| | Omit page 196, beginning at XXII; |
| | Omit page 197; |
| | Omit page 198 to paragraph (2); |
| | Only that part of page 200 which begins with the words, "To the Court," and ends with the words, "to file such parts as an amendment to this petition." |

That there be no chance for error, the following are expressly directed to be not omitted, viz:

(1) Exhibit "A", being the court order sentence of six months on petitioner;

(2) Exhibit "B" of Exhibit "R", order re sentence restated, and fixing bail bond, bill of exceptions, etc.;

(3) Exhibit "C" of Exhibit "R", being copy of the two counts of the indictment;

(4) Exhibit "D" of Exhibit "R", concerning instructions;

(5) Exhibit "E" of Exhibit "R", being copy of opinion of Justice Fulton;

(6) Exhibit "F" of Exhibit "R", being copy of affidavit of Paul Silver.

(e) Exhibit "F", being copy of affidavit of Lester English;

(f) Exhibit "G", being copy of affffidavit of William Bartlett;

(g) Appendix "A", being certain amendments to the Constitution of the United States;

(No Appendix "B" is attached)

(h) Appendix "C", being an article by Sokolsky;

(i) Appendix "J", article;

(j) Appendix "K", being Liberty Press No. 76.

Respectfully Submitted,

WILLIAM A. DOSS,

*Petitioner Pro Se.*

INSERT

The further following matters are to be omitted from the printed record:

(a) Exhibit "G" of Exhibit "R," being copy of the affidavit of James Busick;

(b) Exhibit "C," being copy of "Suggestions of Grounds," etc., used in Supreme Court of Illinois;

(c) Exhibit "D," being copy of order of Supreme Court of Illinois;

(d) Exhibit "E," re W. A. Doss petition in Illinois Supreme Court;

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1945

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NO.....

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UNITED STATES EX REL. WILLIAM A. DOSS,
*Petitioner,*

*vs.*

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI

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*To The Honorable Chief Justice and Associate Justices of The Supreme Court of the United States:*

—I—

### Short Statement and Summary of Matters Involved

Now comes your petitioner, William A Doss, pro se, respectfully praying that a writ of certiorari issue to review a decision, order and judgment of the Circuit Court of Piatt County, Illinois, entered on the 24th. day of August, A. D. 1945, by the Honorable Martin E. Morthland, one of the Judges in and for the said Court, in denying his petition for,—(a) fixing and allowing bail bond pending said hearing and pending this applicaton for a writ of certiorari; and (b) in denying the allowance of said petition for a habeas corpus against the respondent, E. E. Lindsley, Sheriff of the said County of Piatt. That

a certified copy of said petition was duly presented unto the said Judge Morthland in his chambers at and in the city of Decatur, in Macon County, Illinois, on the 18th. day of August, A. D. 1945; and upon his oral directions then given to petitioner's messenger, Attorney Dwight H. Doss, son of petitioner, said petition was in accordance therewith filed with the Clerk of said Circuit Court of Piatt County, Illinois, on August 20th, 1945, at nine o'clock A. M.. The said Judge Morthland then set for hearing the single matter of allowing or disallowing bail bond pending hearing on the merits of said petition, for the 21st. day of August, A. D. 1945, at ten o'clock A. M. However, on the 20th. day of August, 1945, the said Morthland continued said hearing unto the 24th. day of August, 1945, at ten o'clock A. M., without prior notice being given to petitioner, and afterward, on the same day, at noon, notified petitioner's office of said continuance. Petitioner then at once prepared and caused to be filed with said Clerk, on the 21st. day of August, 1945, his protest to the delays and continuances of said hearings to fix bail bond, and also caused a certified copy thereof to be given to the office secretary of the said Judge Morthland, he not being about in his chambers on the same day, and in this record appears a certified copy of said filed document, on page 312. No further action of any kind was taken by him until the matters were called for hearing by him at ten o'clock A. M. on the 24th. day of August, 1945.

(2) At about twenty minutes after ten o'clock A. M. thereafter petitioner was by his orders brought from the said jail by said respondent before the said Judge Morthland, in said Court, where respondent also appeared, and was represented by Carl I. Glasgow as State's Attorney of said County, while petitioner appeared pro se.

(3) Thereupon the said Glasgow moved for leave to file for the respondent his motion to strike from the files said petition, a certified copy of which motion also appears in the record at page 319. Petitioner, by his oral cross-motion, not having had time, nor by the Court allowed him time, to prepare and file a written one, moved that the cause proceed for hearing upon the question of fixing and allowing the giving of a bail bond pending the hearing upon the merits of the petition; and this being instantly overruled, petitioner made a further oral cross-motion to be allowed a fair and reasonable time within which to prepare and file grounds and show causes, as he desired to do, why said motion to strike should not be allowed, so that, as he stated, a record in an apt way and form could be better preserved, etc. But this motion also was likewise instantly denied by the said Morthland, and said cause was called for hearing alone upon said motion to strike the petition from the files.

(4) At the outset Judge Morthland announced, in reply to questioning by petitioner, to the specific effect that he had not read the petition, and that he was not going to now allow time for either side to read it to him, but would briefly hear in a general way from each side as to their general statements and arguments pro and con about it. To this petitioner protested, stating, as the truth was, that it was impossible for him, within an hour or so on each side, to give any fair and comprehensive just statement of such matters to any Judge who in fact knew nothing of the facts it contained, etc. The motion to strike was then presented and argued by said Glasgow in behalf of the respondent for perhaps an hour and a half, which was followed by petitioner in his own behalf for about the same time. The hearing continued through the noon hour, without lunch, and was concluded by about one forty-five

o'clock P. M. of that same day. At the conclusion of the arguments, and without a moment's delay, or any pretended consideration of the issues, or of any of the factual or legal points and matters involved, the trial Judge summarily announced that the motion to strike the petition would be allowed. Next he called for a hearing upon the question of the allowance of a bail bond pending any appeal, petitioner having theretofore announced his intention to apply for a writ of certiorari in this, the Supreme Court of the United States, in the event of any adverse ruling upon said petition; and then said Glasgow presented his objections to the allowance, in about twenty minutes, to which petitioner replied in about the like time; and again, immediately at the conclusion of these arguments, the trial Judge, without any comments upon the facts or the law, instantly ordered the motion for bail bond to be denied also.

—II—

## Statement of Jurisdictional Grounds

("A"—General Factual Situations)

(1) The petitioner was convicted of criminal libel in the Circuit Court of Piatt County, Illinois, under an old statute of this State, and is printed in paragraph 27, page 100, of the petition in the record. The alleged libel consisted, in essence, of the charge that the State's Attorney of said Piatt County, Illinois, one Carl I. Glasgow, "is not a fair and impartial prosecutor," followed or accompanied by specific statements and alleged illustrative cases intended to support the general allegations, as is best and most easily observed from the brief allegations thereof in the indictment itself, in the first count, see Appendix "B", a copy of said Count appearing as Exhibit "B" to said

petition, on page 205 of the record here. On this Count petitioner was found guilty and sentenced to serve six months in the County Jail of said Piatt County, Illinois.

(2) The copy of the second and only other Count of said indictment, as to the charging part thereof, appears in Appendix "C" hereof, and also appears in Exhibit "B" to said petition for habeas corpus, on page 205 of the record here. The jury found the petitioner "not guilty" on this second Count.

(3) The indictment was returned into court on the 15th. day of January, 1942, and the trial was held from the 4th. day of May to the 9th. day of May, 1942. From said conviction petitioner appealed to the Appellate Court of Illinois, which sustained the judgment of the Circuit Court. *People v. Doss*, 318 Ill. App. 387. Petitioner then applied to the Illinois State Supreme Court for a writ of error to the Appellate Court. The Supreme Court affirmed the Appellate Court, and denied the writ. *People v. Doss*, 384 Ill. 400. Then this, the Supreme Court of the United States, on undisclosed grounds, denied petitioner's petition for certiorari to the Supreme Court of Illinois. *Doss v. People*, 321 U. S. 789. But petitioner believes and alleges that it was because his attorneys had erred in the calculation of the time allowed for such, mistaking the beginning of the allowance of the four months of application time from the date of the denial by the Supreme Court of Illinois of a motion for a rehearing, instead of from the date of its order approving the conviction.

(4) However, at every stage, and in the State Courts (*People v. Doss*, 384 Ill. 400, 405), this petitioner challenged the judgment of the Circuit Court of Piatt County, on the ground that the so-called criminal libel statute, as interpreted and applied in his case by the said Courts, was

and is an unconstitutional infringement upon the rights of free speech and a free press under the First and Fourteenth Amendments to the Constitution of the United States, and as are expounded in the decisions of this Court.

(5) That the attitude of the Supreme Court of the State of Illinois is illustrative of the cavalier style in which his position on this important question was answered. At page 405 of the State report (384 Ill.), that Court said:

> "It is next urged by defendant that the constitutional rights of freedom of speech and freedom of the press are involved in this cause and that the defendant has been deprived of these rights. This argument is without merit. * * * While defendant had the right to publish on all subjects, he is responsible for the abuse of that privilege. He cites as authority the case of *Bridges v. State of California*, 314 U. S. 252, but from a reading of that case it is apparent it does not apply here."

(6) Having pressed the fundamental question on freedom of expression in this case in all the courts of Illinois, this petitioner applied to the District Court of the United States, for the Eastern District of Illinois, for a writ of habeas corpus. His petition was denied by the Judge of said Court, Honorable Walter E. Lindley, in a very brief opinion, which gave no fair consideration to the constitutional questions which this petitioner had raised at every stage and in every court. (*Doss v. Lindsley*, 53 F. Supp. 427) This decision is partly based on a holding by the said Judge, in *Doss v. Lindsley*, 53 Fed. Supp. 427, which was a contempt of court case. On February 7, 1945, the Circuit Court of Appeals for the Seventh Circuit affirmed the said District Court, filing a short opinion. That Court also denied a petition for a rehearing on March 14, 1945.

(7) From this later Court petitioner applied for certiorari to this Court, and it was by this Court denied, petitioner believes because the record did not show a sufficient effort of "exhausting" his State remedies in Illinois courts in habeas corpus proceedings, etc.

(8) Thereupon petitioner, to attempt to "exhaust" all of his *possible* State remedies in the courts of the State of Illinois, prepared and filed in the Supreme Court of Illinois, on the 4th. day of June, A. D. 1945, his certain petition for a writ of habeas corpus, a copy of which is "Exhibit "R." attached to said original petition filed in the Circuit Court of Piatt County, Illinois, on the 20th. day of August, 1945, as aforesaid descriped.

The record shows no specific exceptions to the orders of the Circuit Court because of Section 204 of Chapter 110 of the Illinois Revised Statute, 1943 State Bar Association Edition, which is as follows:

> "No formal exceptions need be taken to any ruling or action of the court in any matter or proceedings in order to make such ruling or action a ground for review."

"B"

The discretionary power and jurisdiction of this Court to grant a writ of certiorari are invoked on the following grounds, which are believed to be substantial for the reasons stated and in view of the cases cited:

(1) The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code of the United States. This statute is set out in the Appendix.

(2) Sec. 402, C. 38, Smith-Hurd Annotated Statutes

of Illinois, being the so-called criminal libel statute of that state, is an unconstitutional infringement of the rights of free speech and free press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. This statute is set forth on page 39 of this petition.

(3) The instant proceeding is a cause wherein final judgment rendered by the Supreme Court of the State of Illinois, being the highest Court of that State in which a decision could be had, draws in question the validity of a statute of the State of Illinois, on the ground that it is repugnant to the Constitution and laws of the United States, and as does also the said decision of the Circuit Court of said Piatt County on said petition for habeas corpus on the 24th. day of August, 1945 in such matter, it being the highest Court of the State of Illinois.

(4) The instant proceeding involves a right, privilege and immunity specifically set up and claimed by the petitioner under the Constitution of the United States and the Federal Bill of Rights.

(5) The decision of the Supreme Court of the State of Illinois and of the said Circuit Court of Piatt County on August 24, 1945 abridges the right of free speech and freedom of the press as defined and granted by the Constitution of the United States, Amendment I (Bill of Rights) and the Fourteenth Amendment, and by the Constitution of the State of Illinois, Article II, Section 4.

(6) The decision of the courts of the State of Illinois therein show a total disinclination, or inability, to apply or grasp the fundamental principles, as stated by this Court, in the light of which the constitutional guaranties of free expression under the first and fourteenth amend-

ments to the United States Constitution are to be reconciled in any given case with substantial social interests, which, when there is a conflict, are paramount. That only "great and present danger to paramount public interest" justifies restrictions on free speech and a free press, is ignored by the lower courts, State and Federal.

(7) The criminal libel statute (Smith Hurd Ann. Stat., C. 38, Sec. 402), as construed and applied by the State courts of Illinois below, upon the language of Count I of the Indictment, in holding such to lawfully warrant a restriction upon the rights of free expression, imposes restrictions unlawfully and unwarrantedly upon free expression in violation both of the guaranties on the subject in the United States Constitution and of principles clearly announced by this Court in several cases. The holding of the Supreme Court of Illinois renders nugatory the provisions of the Bill of Rights of the Federal Constitution (Amendment I) and the XIV Amendment, Section I, and the Constitution of the State of Illinois, Article II, Section 4, guaranteeing to the petitioner the right of freedom of speech and of the press, and is in conflict with the decisions in the following cases: *Harry Bridges v. State of California*, 314 U. S. 252 (1941); *Edward G. Budd Mfg. Co. v. National Labor Relations Board* (1942), 142 Fed. 922, 928; and *Whitney v. California*, 274 U. S. 357, where Justice Brandeis, concurring, said at page 376:

> "Fear of serious injury cannot justify suppression of free speech * * * there must be reasonable ground to believe that the danger apprehended is imminent * * * that the evil to be prevented is a serious one. * * * But even advocacy of violation (of law), however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement. * * * In order

> to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated. * * * Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as a means of averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as a means of protection, is unduly harsh or oppressive. * * * There must be the probability of serious injury to the State."

Petitioner alleges that no such conditions appeared to warrant even the lawful finding of the indictment.

(8) The statements and excerpts from the Liberty Press published by this petitioner, which were made the basis of the criminal libel prosecution in the State court, were indubitably made in forceful and unequivocal language. The Constitutionel guarantee of free speech and free expression, however, does not compel insipidity in presenting the truth. Thus, petitioner is wholly unable to improve upon the language of Judge Cooley on this subject, when he said:

> "The beneficial ends to be subserved by public discussion would in large measure be defeated if dishonesty must be handled with delicacy and fraud spoken of with such circumspection and careful and deferential choice of words as to make it appear in the discussion a matter of indifference. * * * Who would venture to expose a swindler or a blackmailer, or to give in detail the facts of a bank failure or other corporate defalcation, if every word and sentence must be uttered with judicial calmness and impartiality as between the swindler and his victim, and every fact and every inference be justified by unquestionable legal evidence. The undoubted truth is that honesty

> reaps the chief advantages of free discussion; and fortunately it is honesty also that is least liable to suffer serious injury when the discussion incidentally affects it unjustly. * * * The law, justly interpreted, is not chargeable with the inconsistency of tempting conductors of the press with a deceptive pretence of liberty and then punishing them in damages if they act upon the assumption that the liberty is genuine.
>
> "*Atkinson v. Detroit Free Press Co.*, 46 Mich. 341, 382, 383, 384.

Petitioner was convicted of criminal libel under an indictment containing only two counts, pursuant to a statute of the State of Illinois set out in full on page 39 of the brief under Specifications of Error No. 3.

The jury acquitted on Count II, but convicted on Count I.

The opinions of the lower State courts do not discuss or state the standard laid down by this Court in *Bridges v. State of California*, 314 U. S. 252, and other cases, in the light of which it must be determined whether the conduct of an accused presents such "a great and present danger to a paramount public interest as will justify restricting the right of free expression." Petitioner believes he has been denied certain fundamental rights, secured him by the Constitution of the United States. No court has so far discussed the fundamental question whether there was a public interest in this case paramount to the right of free expression, for the exercise of which this petitioner now suffers imprisonment.

Here also petitioner cites other cases upon which he relies for support in these premises, as follows:

*White vs. Ragen*, 65 S. Ct. 978 (1945)

*Bridges v. Wixon*, 65 S. Ct., No. 17, pages 1445-1464 (1945).

*Screws, et al. v. United States*, S. Ct. 65, No. 14, pages 1031-1063, at 1051 (1945).

*Stuart v. People of the State of Illinois*, 4 Ill. 399.

*Thomas v. Collins*, 65 S. Ct. 315 (1944).

—III—

**Questions Presented: Specifications of Errors**

(1) The Court erred in striking the petition from the files.

(2) The Court erred in denying the petition for habeas corpus.

(3) The Court erred in denying bail bond immediately pending hearing, upon the first presenting of the petition to Judge Morthland.

(4) The Court erred in denying bond pending application for this writ of certiorari.

(5) The Court erred in following the law as laid down by the Supreme Court of Illinois as it applies and interprets it to be in the case at bar, which is an unlawful restriction upon the "freedom of speech and of the press", which was and is an unconstitutionel application of said law (if it indeed be ever otherwise constitutional in any case), as applied to the facts in petitioner's case here, since it does not appear from anything in the record that "paramount public interest" required or justified this restriction on free speech and free press. Indeed these essential factual conditions are neither alleged in either count-- nor was any proof of the State even attempted to be produced or adduced thereabouts, as was its legal burden both

to allege and prove. Secondly, the record does not show that there was any "clear and present danger" to the public to warrant the restrictions imposed upon a free press law by the sustaining of this conviction, (*Schenck v. United States*, 249 U. S. 47; *Bridges v. Wixon*, 65 S. Ct. 1443), and cites the total failure to charge this in the indictment and the total failure to offer any proof upon that subject either, and it was error not to do both; and the record is void in both instances.

(6) It was and is error to hold that petitioner was and is subject to imprisonment under the said criminal libel statute of Illinois, and under no other statute or law is it alleged or claimed by the prosecution that said imprisonment is lawfully warranted. This case arises, it must be remembered, *only upon motion to strike the petition.* By the law of Illinois all matters and facts well pleaded must be taken as true and proven. Moreover, it is cited that as a matter of law the Count upon which the conviction only rests does not, upon its face, even if proven to be all true as alleged, state any sufficient legal cause to sustain a verdict of guilty, nor any valid judgment sentence thereupon, for the reasons aforesaid cited. Indeed, in paragraphs 9, 10 and 11, on pages 10 and 11 of the petition in this record, and at numerous other places in the said petition, it is shown that the issues were tendered expressly raising the above points, and by the *motion to strike* those issues were joined in by the facts to be admitted as alleged; and the Court erred in not sustaining the petitioner's allegations of the legal insufficiency of the allegations in the said count, and in the total want of proving, by the People, any such circumstances to make such publications to not be protected by the guaranties of the Federal Bill of Rights.

## ADDITIONAL ERRORS

1: Error in refusing to at once order respondent to allow petitioner's stenographers admittance to the jail, for use in preparing said petition for habeas corpus, or other reasonably necessary legal work, or business letters to be answered, etc.

2: Error to delay thusly the preparation of the petition.

3: Error to deny order on respondent to provide petitioner with a chair, table, fan, bed, knife and fork and something in the way of dishes, or otherwise, so as not to "dump" and "mix" all foods together; or to allow petitioner to provide himself with the same.

4: Error to deny order on respondent to provide fair air ventilation to petitioner, especially in hot weather, and to fail to order screens provided at windows of petitioner's cell, as without them he was bitten and being bitten terribly by mosquitoes.

5: Error not to order respondent to allow admittance to see petitioner, at reasonable business hours each day, persons desiring to interview petitioner on business matters, or when petitioner desired to interview them, and to especally include his wife, T. W. Doss, and his stenographers, Lula Perry, Ina Mae Glasgow and Leone Purcell, and his son and attorney, Dwight H. Doss.

6: Error not to order respondent's "visiting day" order and practice of but once each week from two o'clock to four o'clock P. M., set aside as being violative of petitioner's federal Constitutional rights, and that of all other prisoners.

7: Error to not order and find respondent and State's Attorney, Carl I. Glasgow, to be in contempt of court and

punish them for malicious failure of duties in the certain premises of acts of omission, as well as of commission, as charged against them, and which they admit not doing, or doing, by the said motion to strike the petition from the file.

8: Error not to hear evidence on the charge charging respondent to be insane, being violative of petitioner's Federal Constitutional rights to be imprisoned with the jailer being allegedly insane.

9: Error to not order respondent to serve at all meals diabetic balanced ration of proteins, starches, vegetables and fruits.

10: Error not to order respondent to furnish fair bed accommodations to petitioner by way of use of sheets and pillow slips to be laundered at least once a week, so as to be in fair accord with reasonable standards of the American way of living.

11: Error not to have cited and summoned the other said attorneys, viz, N. E. Hutson, Robert P. Shonkwiler, E. J. Hawbaker and Burl A. Edie to show cause, as also was prayed, why they should not be in contempt of court, etc., and punished accordingly.

12: Error to not have followed other prayers thereof, by such orders, as follows: If the Court found such allegations as above established, as it should have, then to order the Clerk of said Court to forward a certain paper to the Secretary of the Illinois State Bar Association, covering such fact findings, together with said Court's recommendations that disbarment proceedings be instituted against such attorneys as shall have been so found to be guilty, etc.; and that they each should have been so found guilty in the premises and punished for contempt of court in all

of said premises, because therein they were conspiring to, and did, deprive and deny fundamental rights of this petitioner which were guaranteed him protection thereunto against by the Federal Constitution and its Bill of Rights, as in said petition specifically charged in detail, etc., as by the laws of America, common justice should be had, ordered, commanded, sustained and preserved,—and that to not do so leaves petitioner otherwise facing a void guaranty by such laws, leaving them to be to him, and to his America, and even to the world, as "a sounding brass and a tinkling cymbal." It has been demonstrated that unless those guarantees are "fulfilled" by the backing of this Court there is no doubt that they will not be by the said Circuit Court of Piatt County, Illinois, and much less are the hopes and warranted sensible expectations that the "inactive" Supreme Court of Illinois (on and as to such or any Federal Constitutional rights) will do anything at all to be helpful to preserve and protect those rights and privileges, the most vital of all to "the right of life and liberty itself, its freedom, its peace and its happiness in America."

All of which is respectfully submitted.

WILLIAM A. DOSS,
*Petitioner—Pro Se.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1945

NO.....

UNITED STATES EX REL. WILLIAM A. DOSS,
*Petitioner,*

*vs.*

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
*Respondent.*

## BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI; REASONS RELIED ON FOR ALLOWANCE OF WRIT.

### Specification 1.

This is an error of fact, and it would be superfluous to attempt an argument in its support. It is a little astonishing when it is noted that the petitioner has stood on this proposition from the beginning of this litigation and never swerved from it in any court. The strangest circumstance of all, however, is that no court seems willing to take the trouble to even discuss the fundamental question of this case involving any question concerning petitioner's rights, under any provisions of the laws of these United States.

### Specification 2.

In *People v. Zimmerman* (1928), 278 U. S. 63, Bryant

was held under a statute which he asserted violated his rights under the Fourteenth Amendment, and sought a writ of habeas corpus. In that case this Court carefully examined his contention. Here this petitioner contends, and has in all courts contended, that he is held under a judgment pursuant to a statute he asserts violates his rights under the Fourteenth Amendment of the United States Constitution. But he cannot persuade any court in Illinois, nor could he persuade the lower Federal Courts, to examine seriously these questions he raises. It is respectfully submitted that it is an error which this Court should correct, in effect, to refuse a man convicted of a crime a hearing upon the very essence of his defense. That comes dangerously close alone to being just a plain denial of "due process of law" and justice in this case. As to the merits of this argument, he will present them under specification No. 3, post.

## Specification 3.

Petitioner thinks that Section 402, Chapter 38, Smith-Hurd Ann. Stat., under which this petitioner was found guilty of criminal libel and sentenced to six months in jail, as applied to the undisputed facts (stated in Count I of the indictment) and interpreted by all of the Courts of Illinois, is an unconstitutional restriction upon the right of free speech and a free press and that, therefore, the judgment against this petitioner is void and should be so pronounced. The said Illinois Statute is set forth below:

> "A libel is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation or publish the natural defects of

one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or financial injury."

The charging part of the indictment, Count I, on which the petitioner was found guilty and referred to herein, reads as follows:—

"Carl Glasgow (meaning Carl I. Glasgow) is not a fair and impartial prosecutor—no sir, (1) in the Muse case I say he (meaning Carl I. Glasgow) is either a persecutor, or an unfair prosecutor, (2) in the Ard case, or should be case, he (meaning Carl I. Glasgow) wrongfully shields that man; (3) (a) in the recent Bell criminal case he (meaning Carl I. Glasgow) wrongfully fails to prosecute; (b) and that was my truck more than Bell's for which we got out the complaint, I wrote it; he (meaning Carl I. Glasgow) wrongfully uses and bargains the dismissal of that Criminal case, totally ignores my rights as a citizen, to get the sheriff his (meaning Carl I. Glasgow) client out of a bad civil damage suit;! (4) He (meaning Carl I. Glasgow) basely and wrongfully threatened and asserted falsely to Dwight Doss, as a fact that father Muse would be indicted for bribery in that bastardy case! unless (?) or if (?) somebody (?) did not?? What did he (meaning Carl I. Glasgow) mean? He (meaning Carl I. Glasgow) failed on this threat! Why did he (meaning Carl I. Glasgow) make it?

"Yes, in my judgment Carl Glasgow (meaning Carl I. Glasgow) would have a hard time, a very hard time indeed,—to save his State's Attorney commission in not being taken from him (meaning Carl I. Glasgow), if he (meaning Carl I. Glasgow) were prosecuted for these and various acts of malfeasance in office (meaning thereby to

charge that the said Carl I. Glasgow had been guilty of conduct unbecoming a member of the legal profession to such an extent that his license to practice law could be taken from him by the Supreme Court of the State of Illinois) but he (meaning Carl I. Glasgow) need not worry, I'll give him (meaning Carl I. Glasgow) no such direct trouble—I'll do mine locally and all in the open,—and right thru 'Liberty' so if I am wrong on my facts or actions, I am liable for damages and ready to go to jail, but I think the public is honest and fair, and it will stand by me now, it begins to see things!; I know I have tackled a gigantic machine, 'tis a big one, it goes all over Piatt County and even over into other counties for their help,—but I'm watching these angles too!"

The language is strong, yes, but not nearly so violent as language used in the press and from the platform about the President of the United States in some recent and current periods in our history, and hundreds of public officers throughout the United States. Moreover, the strongest statement, in effect being, that the State's Attorney was a liar and a cheat, *the jury found to be true*, and, surely the publication thereof was thusly justified in all respects, morally as well as legally.

*This is important!* It is to be noted that if the statements in Count I were *not true*—the officer (Carl I. Glasgow) had at all times the protection of the civil laws against defamation of character, *which he did not and has not invoked.* This is a material fact in the opinion of the Court in the Case of *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, ..39, 641; it says the freedom of speech and of the press are not to be restricted in order to protect the civil rights "susceptible to redress by other means."

It is to be noted also that the charge under the second Count (App. C), *charged and proved*, was that State's Attorney Carl I. Glasgow "was a liar and a cheat",—and so if spoken of a lawyer in certain circumstances certainly constitutes ample sufficient grounds for disbarment. The petitioner's deductions on the subject of the "Commission" of the State's Attorney find ample justification also in the verdict of "not guilty" of the jury. How could the jury divide the same evidence as it did? Can one lawfully be both "guilty" and "not guilty" upon the same "bundle" of evidence? Petitioner says not in America, in circumstances like the charges are related together in these two Counts.

A close analysis of Count I of the indictment, on which the judgment of the court alone rests, shows its flimsy character as a legal *reason* for curtailing the freedom of the press. The first paragraph is probably the most important. The second paragraph seems serious upon its face, but really is a particularization with respect to the charge set forth in Count II, namely, that the State's Attorney was a "liar and a cheat," with warranted deductions from those "facts." Obviously, if this statement be true, the suggestion in the second paragraph of Count I would not be far fetched—would certainly be a deduction justifiable under the Constitutional guaranties of free expression as not amounting to a "great and present danger" to any paramount public interest in behalf of which this Constitutional right only may be curtailed. Per contra, if such a statement be true of a public official it is in the public interest that it be *known* and as *generally* as *possible*. It is to the interest of the "liar and cheat" in the public service that the *cloak* of *secrecy* shall continue to continue to *conceal* his wrongs and errors from the public view.

The first paragraph of Count I therefore contains the

words on which the State rests its claim of power to restrict the freedom of the press and punish the citizen criminally for an abuse of this Federal Constitutional right. Here the petitioner charges that the State's Attorney is "either a persecutor, or an unfair prosecutor"; and that he "is not a fair and impartial prosecutor." Then follows numerous alleged cases which are given in supporting the charge.

It is respectfully submitted that there are very few prosecutors in the United States who have not frequently been called "unfair", or "persecutors", or "partial". No prosecutor is usually impartial, and the constitution and the general law of the United States, and of every state and territory in the Union, presume that prosecutors are or are not likely to be impartial. That is why the law at public expense appoints free counsel for impecunious defendants; everybody knows that the prosecutor usually is a biased and partial person, it is but human nature to be so, and will not usually fairly protect the defendant whom he prosecutes. *Johnson v. Zerbst*, 304 U. S. 458, 463. To say that a prosecutor is unfair, or not impartial, or even that he is a persecutor, is to give expression in common every day street parlance to a fact which underlies some of the fundamentals of our Constitution and American way of life—freedom to express opinions, and our criminal law and its procedure should recognize all of that. To jail a man or a publisher for such a statement would be branded an outrage if it happened in a totalitarian country instead of our own!

Petitioner charged, according to the indictment, that the State's Attorney "wrongfully shields a man", giving the name. Is not this a common-place accusation against a prosecutor who pursues some, but not all, offenders?

He "failed to prosecute", but who has not heard that charge a thousand times? He "bargains the dismissal of a criminal case;" but it is a matter of universal knowledge also that prosecutors bargain for pleas of guilty and agree not to prosecute other charges, as a part of the bargain? Nothing in this record shows that this was not just one of such cases, which in the practical administration of the criminal law, public officers do not—for a good or perhaps not for a good reason—chose to prosecute. Again, petitioner is charged with saying that the State's Attorney had threatened to prosecute and not done so! What trivialities here are called up to throttle free speech and a free press in Illinois, is not only unbelievable, it is dumfounding that such could be carried on as far as it has been here allowed in America!

There it is. No charge is here made which is not commonplace in relation to public prosecutors throughout the country. It is respectfully urged that because of the commonplace character of these charges, no "paramount public interest" was put in such "great and present danger" as to justify the imprisonment of this petitioner and a restriction upon the right of freedom of expression, by the law of the land; that Illinois does not have all the law that a citizen of these United States is permitted to live under and be protected by!

First: The rights of free speech and of a free press may not be restricted in order "to protect private rights susceptible of redress by other means". This Court has said long ago (and forcibly repeated recently) that,

> "freedom of speech and of the press, of assembly and of worship may not be infringed on such slender grounds. (Right of the state to impose restrictions on a public utility). They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may law-

fully protect * * * They may not be restricted in order to protect private rights *susceptible to redress by other means.*" (Emphasis supplied).

*West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 639, 641.

In *re W. A. Doss*, 367 Ill. 570, we have an illustration of the failure of that court to grasp the fundamental rights of individuals under the First and Fourteenth Amendments. The Court has said:

"The publication of newspaper articles, regardless of when they appeared * * * (is) especially to be condemned. (P. 573) * * * The fifth complaint charged respondent with the preparation and the publication of numerous newspaper articles which, although appearing after the trial of the case involved, criticized the court and the prosecuting officers in intemperate language."

Contrast that with what this Court said in *Bridges v. State of California*, 314 U. S. 252 (1941), among other things, it was stated:

"Such criticism after final disposition of the proceedings would clearly have been privileged (P. 272) * * * The assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American public opinion," and

we urge that these other recent cases of this Court clearly reaffirm those pronouncements of the law of our land!

The civil remedies of Illinois governing defamation of character were all open to Carl I. Glasgow, State's Attorney of Piatt County, but he did not resort to them. Instead, he invokes a penal statute which can be sustained only on the theory that it serves a *public interest* which is

*paramount* to the right of *free speech* and a *free press*. The record is deathly silent on all such even *allegations* in the count, and void of all evidence, even if had been charged.

Second: It is now also settled that there must appear "clear and present danger" in order to justify "restrictions upon expression where the substantive evil sought to be prevented by the restrictions is destruction of life or property, or invasion of the right of privacy." *Bridges v. State of California*, 314 U. S. 252, 262. This Court there said that the criteria "applicable under the Constitution to other types of utterances" are applicable "in contempt proceedings to out-of-court publications pertaining to a pending case", 314 U. S. at page 268,—and these recent cases of this Court I have cited repeatedly herein, merely shows this Court is sustaining its holdings back there in 1941 in that Bridges case! Why *will* our Supreme Court of Illinois not obey that law?

## Specification 4.

The lower federal courts before relied on *Ex parte Hawk*, 321 U. S. 114. This case does not hold, nor does any other, that it is impossible for a party to exhaust all his remedies in the State Courts without resort specifically and eo nomine to habeas corpus. The underlying reason for the rule in the federal courts is the historic reluctance of these courts to take from the custody of the State a person who is held by state authority, until the courts of the state have had a full opportunity to pass upon the identical legal question which the petitioner raises in the federal courts. In the light of the reason for, and, therefore, the rule, the petitioner, now a suppliant at the bar of this Court, has accorded the State Courts of Illinois full opportunity to pass on the question he now urges here, and

each time the courts of Illinois have either ignored the question, or resolved it against him.

The Hawk case is not controlling because its facts are essentially different from the facts here; but in the statement of the general doctrine, it is controlling in favor of this petitioner, in this, that while it requires, as a prerequisite, that the petitioner exhaust "all state remedies available", it does not hold that this rule cannot be complied with without resort to habeas corpus. Put differently, the meaning of the rule is that every appropriate State remedy which, in the circumstances of each case, suggests the possibility that the State court may grant relief, must be invoked before coming to the federal courts; it does not, on the other hand, mean that every conceivable procedural remedy, always including habeas corpus, must be resorted to by the petitioner after all the available State tribunals have refused him relief in some suitable and proper State proceeding upon the very facts which in a habeas corpus or any other proceeding would be before such courts. Why stop with habeas corpus? Why not require the aggrieved convict to resort to coram nobis? Or coram vobis? Or some or all of the numerous motions increasingly available in various jurisdictions to test the correctness of legal procedure? Is it not plain that if the test is some formal procedure rather than the actual result in substance, our whole system of justice become absurd?

> In the Hawk case the Court said that the
> "petitioner's present contentions have been presented to the state courts only in an application for habeas corpus filed in the Nebraska Supreme Court, which is denied without opinion. From other opinions of that court it appears that it does not usually entertain original petitions for habeas

corpus, but remits the petitioner to an application to the appropriate district court of the state, from whose decision an appeal lies to the State Supreme Court."

(P. 116) The Court continues in the Hawk Case:

"Of this remedy in the State Supreme Court petitioner has not availed himself. Moreover, Nebraska recognizes and employs the common law writ of coram nobis which, in circumstances in which habeas corpus will not lie, may be issued by the trial court as a remedy for infringement of the constitutional right of the defendant in the course of the trial."
(P. 116)

In *Mooney v. Holohan*, 294 U. S. 103, 55 S. Ct. 340, the Court reiterated the doctrine thus, without any requirement that habeas corpus must in all cases be resorted to as a preliminary:

"Orderly procedure, governed by principles we have repeatedly announced, requires that before this Court is asked to issue a writ of habeas corpus * * * recourse should be had to whatever judicial remedy offered by the State may still remain open."

It cannot reasonably be said that petitioner's remedy "may still remain open" when the courts have passed upon identical fact situations in a proceeding *differing only in name*. This is exactly what is now done here. Petitioner has exhausted all State remedies and then applies to this Court direct for a writ of certiorari.

And it does

"appear that the question presented here has been considered on the merits by the Supreme Court (of Illinois) in a prior proceeding."
*Ex parte Williams*, 217 U. S. 604, 63 S. Ct. 431.

## Specification 5.

This has been dealt with under the foregoing assignment of error and will not, at this time, be further elaborated, excepting to say that it has become hornbook law that the decisions of the state tribunals interpreting the statutes of the State are not binding or conclusive upon the federal courts when it is asserted by persons or corporations that rights secured them by the Federal Constitution are abridged, or violated by the interpretations challenged.

The adjudication of the Circuit Court of Piatt County, the finding of the petitioner guilty under the facts and circumstances detailed in this record, as this petitioner has contended and now contends, is a direct violation of the right of free speech and of free press, guaranteed him by the federal Constitution.

> "But, as has been held, very often, the question whether a State law or a tax imposed thereunder deprives a party of rights secured by the Federal Constitution, depends not upon the form of the Act, nor upon how it is construed or characterized by the State Court, but upon its practical operation and effect."

*American Manufacturing Co. v. City of St. Louis* (1918), 250 U. S. 459, 462, 39 S. Ct. 522; *Howard v. Fleming*, 191 U. S. 126, 23 S. Ct. 49.

## CONCLUSION

Petitioner, however, does make, in good faith, formal and sincere application hereby and herein, that this Honorable Court take note of the fact that no Court in Illinois, or any Judge thereof, will, as he views it and charges the fact and law to be, do its or his duty under those Federal

Constitutional obligations, in accordance with and in obedience to their sworn duties to do, and fix and allow bail bond unto petitioner pending any of these proceedings herein mentioned; adding that petitioner stands ready, able and willing to give bond with approved securities in any reasonable sum that this Honorable Court may fix, or direct some other proper person or Court to fix and allow; he reminds this Court again that his sentence is but upon a misdemeanor, yet, it is for six months, and he has been serving thereon since June 16th. last, thus making his prison time only half up this September 16th, so, if he be accorded bail bond promptly, it can still be of substantial help to the petitioner, if, in the end, he should be absolved from all further requirements to further serve under it.

The utter injustice of denying bail bond in every case lies in the fact that if the prisoner later is ordered released, who will requite unto him the time he has served in prison and his financial damages?

Petitioner states that he is and will cause due notice of the filing of this petition in this Court to be duly served upon the respondent, E. E. Lindsley, Sheriff of said County, and Carl I. Glasgow, as State's Attorney of said County, and, in said notice especially direct their attention to the fact that petitioner herein is making said application for an order of allowance of bail bond, etc., and will cause proof of such service thereof to be thereafter duly filed with the Clerk of this Court.

THEREFORE, THE PREMISES CONSIDERED, Petitioner prays,

(a) That this Honorable Court will, without unnecessary delay, enter an order admitting petitioner to bail up-

on filing approved bail bond in such an amount, with approved security, and conditioned as shall be provided, pending the final determination of the hearing upon the petition herein;

(b) That this Court will cause its writ of certiorari to be issued and directed to and against the said Circuit Court of Piatt County, Illinois, to review its said order and judgment in the premises as herein complained of, etc., as, among other things, it entered on the 24th. day of August, A. D. 1945, in striking from its files the said petition for habeas corpus, and in denying the allowance of bail bond unto petitioner pending these proceedings before this Court;

(c) That upon final hearing to reverse the said judgments and orders of the said Circuit Court of Piatt County, and order the release and discharge of this petitioner forever from all further serving of any sentence under its said order and judgment, and directing it to so cause the same to be entered upon its records in accordance therewith, etc., and all at the costs of respondent, E. E. Lindsley, as Sheriff of said Piatt County, Illinois.

All of which is respectfully submitted.

WILLIAM A. DOSS,
*Petitioner—Pro Se.*

STATE OF ILLINOIS)
COUNTY OF PIATT) ss.

William A. Doss, petitioner, pro se, in the above entitled cause, being first duly sworn upon his oath, deposes and says that he has read the foregoing petition for writ of certiorari, knows the contents thereof, and says that the

matters and things therein contained are true and correct.

And further affiant saith not.

WILLIAM A. DOSS,

Subscribed and sworn to by William A. Doss, petitioner, pro se, in the above entitled cause, before me, Lula Perry, a Notary Public in and for said County and State, this 18th day of September, A. D. 1945. ffl

LULA PERRY,

(SEAL *Notary Public.*

My Commission Expires: April 14, 1946.

## APPENDIX

*A*:

Judicial Code of the United States, Sec. 240 (a):

"In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columba, it shall be competent for the Supre Court of the United States, upon the petition of any part thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

* * *

Indictment returned by October Grand Jury, Piatt County, Illinois, on January 15, 1942, against W. A. Doss.

COUNT 1.

"Carl I. Glasgow (meaning Carl I. Glasgow) is not a fair and impartial prosecutor,—no sir, (1) in the Muse case I say he (meaning Carl I. Glasgow) is either persecutor, or an unfair prosecutor, or an unfair prosecutor there, (2) in the Ard case, or should be case, he (meaning Carl I. Glasgow) wrongfully shields that man; (3) (a) in the recent Bell Criminal Case he (meaning Carl I. Glasgow) wrongfully fails to prosecute; (b) and that was my truck more than the Bell's for which he got out the complaint, I wrote it; he (meaning Carl I. Glasgow) wrongfully uses

and bargains the dismissal of that Criminal case, totally ignores my rights as a citizen, to get the sheriff his (meaning Carl I. Glasgow) client out of a *bad* civil damage suit'; (4) He (meaning Carl I. Glasgow) basely and wrongfully threatened and asserted falsely to Dwight Doss, as a fact that father Muse would be indicted for bribery in that bastardy case ? unless (?) or if (?) somebody (?) did not do ?? What did he (meaning Carl I. Glasgow) mean? He (meaning Carl I. Glasgow) failed on this threat! Why did he (meaning Carl I. Glasgow) make it?

"Yes, in my judgment Carl Glasgow (meaning Carl I. Glasgow) would have a hard time, a very hard time indeed,—to save his State's Attorney commission in not being taken from him (meaning Carl I. Glasgow), if he (meaning Carl I. Glasgow) were prosecuted for these and various acts of malfeasance in office (meaning thereby to charge that the said Carl I. Glasgow had been guilty of the crime of malfeasance in office) and I think he (meaning Carl I. Glasgow) could be disbarred,—(meaning thereby to charge that the said Carl I. Glasgow had been guilty of conduct unbecoming a member of the legal profession to such an extent that his license to practice law could be taken from him by the Supreme Court of the State of Illinois) but he (meaning Carl I. Glasgow) need not worry, I'll give him (meaning Carl I. Glasgow) no such direct trouble—I'll do mine locally and all in the open, — and right thru "Liberty" so if I am wrong on my facts or actions, I am liable for damages and ready to go to jail, but I think the public is honest and fair, and it will stand by me now, it begins to see things! ; I know I have *tackled* a *gigantic* machine, 'tis a big one, it goes all over Piatt County and even over into other counties for their help,—but I'm watching these angles too!"

*C*:

COUNT 2.

"I propose now to send a statement of this situation to the office of the Governor and Attorney General of Illinois and to the President and Secretary of the State Bar Association and to N. E. Hutson, as President of the Piatt County Bar Association—if that sort of lieing and deceitful man (meaning Carl I. Glasgow and meaning thereby to charge that the said Carl I. Glasgow was untruthful, a liar and a cheat) can fill the State's Attorney's chair of this County—then, indeed, is the life, liberty and property of every person in jeopardy who happens to refuse to swear allegiance to the 'Monticello Bar Gang Attorneys,."